

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1468 of 1997

in

SPECIAL CIVIL APPLICATION No 4204 of 1997

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
 2. To be referred to the Reporter or not?-No.
 3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
 5. Whether it is to be circulated to the Civil Judge?-No.

GANGABEN DAUGHTER OF HARGOVINDBHAI VALLABHBHAI

Versus

COLLECTOR

Appearance:

MR MUKESH R SHAH for Appellants
Mr.D.N. Patel, Assistant GOVERNMENT PLEADER,
for Respondent No. 1
MR UTPAL M PANCHAL for Respondent No. 3, 4, 5, 6

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

Date of decision: 07/12/98

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

This appeal is directed against the judgment in Special Civil Application No.4204 of 1997. The appellants challenged the order passed by the Deputy

Collector on 12.8.1983. The appellants were parties to Special Civil Suit No.422 of 1978 and the Civil Judge (Senior Division), Surat passed a decree on 30.12.1978 in that suit. Pursuant to the decree passed by the civil court, certain lands situated at Fulvadi, Taluka Choryasi of District Surat were entered in the names of the appellants in the village records. The Deputy Mamlatdar, vide his order dated 23.4.1980, entered the names of the appellants in the revenue record as owners of the land in question. Pursuant to the objection raised by some other parties, and also on the grounds that the change of mutation was violative of the provisions of the Urban Land (Ceiling and Regulation) Act and the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the Deputy Collector passed an order on 12.8.1983, quashing the mutation entries in the revenue record. Two co-owners preferred revision before the Special Secretary (Appeals), who directed the Collector, Surat to decide the revision application as per Section 108(5) of the Act and the Collector dismissed the same and confirmed the order passed by the Deputy Collector. The appellants thereafter filed a revision application in 1996. That also was dismissed and hence, the appellants filed the writ petition, being Special Civil Application No.4204 of 1997, praying that the order passed by the Deputy Collector on 12.8.1983 shall be quashed. The learned single Judge held that the order passed by the Deputy Collector is not liable to be quashed. This is challenged before us.

We heard the appellants' counsel, the counsel for the contesting respondents and also the Assistant Government Pleader. The appellants contended that under Rule 108 of the Land Revenue Rules, the Deputy Collector was not competent to set aside the order passed by the Deputy Mamlatdar, ordering the mutation entry. It was also contended that the entries in the revenue records are only for the purpose of collecting tax. We are told that even now, there is a pending suit between the parties as Special Civil Suit No.1229 of 1995, before the Civil Judge (Senior Division), Surat. The entries in the revenue records are subject to the result of the suit.

The learned Assistant Government Pleader pointed out that the appellants, by transferring the land to others, have committed breach of the provisions contained in the Urban Land (Ceiling and Regulation) Act and the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, but, so far, no steps have been taken by the authorities against these appellants. It is submitted that the mutation entries have been ordered to

be cancelled because of the violation of the provisions of the above two Acts. We make it clear that the authorities are at liberty to take appropriate action as permitted under law despite the mutation entries, if any.

The entries in the revenue records will continue to be there as ordered by the Deputy Collector on 23.4.1980, subject to the decree that may be passed in Special Civil Suit No.1229 of 1995 pending before the Civil Judge (Senior Division), Surat. The order of the Deputy Collector dated 12.8.1983 is set aside to that extent.

The Letters Patent Appeal is disposed of accordingly.
